SUPREME COURT, U.S.

No. 06-1349 FEB 06 2007

OFFICE OF THE CLERK

IN THE

The Supreme Court of the United States

Louis Segal,

Petitioner

v.

Linda Whitmyre

Respondent

On Petition For Writ of Certiorari
To the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Louis Segal, Petitioner
313 Sandtree Drive
Palm Beach Gardens
Florida 33403-1520
Phone #561-694-1122

Questions Presented for Review

Please understand that none of the following questions refer to any persons or federal agencies involved with National Security and/or Foreign Affairs/Diplomacy.

1. **Are all resolutions of disputes between United States Citizens and federal agencies required to comply with the Citizen's Fifth Amendment right to due process of law?**

2. Does denying an individual an appeals hearing constitute a violation of that individual's Fifth Amendment right to due process of law?

3. If denying an individual an appeals hearing does not constitute a violation of that individual's Fifth Amendment right to due process of law, what procedure would then satisfy his/her Fifth Amendment right to due process of law?

4. Since the Anti-Injunction Act, 26 USC §7421(a), has no corresponding part in the Code of Federal Regulations (CFR), does it still legally and lawfully apply to the general public?

5. If the Anti-Injunction Act, 26 USC §7421(a), does legally and lawfully apply to the general public, and therefore court suits, which restrain the assessment and/or the collection of taxes, are not legally allowed, then:
    - **a.** Why is there a Tax Court?
    - **b.** Is Tax Court an administrative procedure?
    - **c.** Why are Tax Court decisions allowed to be appealed to Federal District Courts and also to United States Courts of Appeal?

LIST OF INTERESTED PARTIES

The Petitioner
Louis Segal, Pro Se
313 Sandtree Drive
Palm Beach Gardens, Florida 33403-1520
(561) 694-1122

The Respondent
Linda Whitmyre*
C/O Teresa E. McLaughlin
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*Linda Whitmyre no longer works for the Internal Revenue Service, according to her attorneys.

Representing the Respondent, Linda Whitmyre:
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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iv

CITATIONS OF OFFICIAL & UNOFFICIAL REPORTS OF OPINIONS & ORDERS ENTERED IN THIS CASE..... 1

STATEMENT OF THE BASIS FOR JURISDICTION..... 2

CONSTITUTIONAL PROVISIONS INVOLVED... 3

STATEMENT OF THE CASE..... 4

REASONS FOR GRANTING THE WRIT..... 6

CONCLUSION..... 7

INDEX TO APPENDICES..... 8

APPENDIX A. Federal District Court for the Southern District of Florida Dismissed on April 6, 2005..... 9

APPENDIX B. Eleventh Circuit Court of Appeals Case No. 05-13278 Affirmed Federal District Court's Dismissal on April 13, 2006..... 22

APPENDIX C. Eleveenth Circuit Court of Appeals Case No. 05-13278 Petition for Rehearing En Banc Denied on November 6, 2006..... 27

Table of Authorities

1. **FIFTH AMENDMENT, CONSTITUTION OF THE UNITED STATES, relating specifically to due process**

2. **BIEBER v. DEPARTMENT OF THE ARMY, 287 F.3d 1358 (Federal Circuit 2002)**
   [1] Constitutional Law 92k318(1) Most Cited Cases
   "The requirements of due process apply to administrative proceedings. U.S.C.A. Const. Amend. 5."

3. **CONSTANTINO v. TRW, INC. 13F.3d 969 (6th Circuit 1994) Keycite History**
   [9] Internal Revenue k3049 220k3049 "Unlike treasury regulations, Internal Revenue Service (IRS) rulings do not have the force of law and are merely persuasive authority."

4. **MATHEWS v. ELDRIDGE, 424 U.S. 319, 96 S. Ct. 893 (Supreme Court of the United States 1976)**
   [4] Constitutional Law 251.6 92k251.6 Most Cited Cases (Formerly 92k305(2)) "Fundamental requirement of due process is opportunity to be heard at meaningful time and in meaningful manner. U.S.C.A. Const. Amends. 5, 14."
   [5] Constitutional Law 251.5 92k251.5 Most Cited Cases (Formerly 92k251) "Due process is not technical conception with fixed content unrelated to time, place and circumstances; rather, it is flexible and calls for such procedural protections as particular situation demands. U.S.C.A. Const. Amends. 5, 14."
   [8] Constitutional Law 318(1) 92k318(1) Most Cited Cases (Formerly 92k251) "Degree of potential deprivation that may be created by particular decision is factor to be considered in assessing validity of administrative decision-making process from due process standpoint. U.S.C.A. Const. Amends. 5, 14."

5. **UNITED STATES v. MAROLF, 173 F.3d 1213 (9th Circuit 1999)**
   [15] Administrative Law and Procedures 390.1
   15Ak390.1 Most Cited Cases: "Internal agency regulations cannot legitimate the violation of constitutional or statutory rights."

6. **Federal Register Act, 44 USC, Chapter 15, § 1505.**

7. **Anti-Injunction Act, 26 USC § 7421 (a) Tax**

Citations of Official and Unofficial Reports of Opinions and Orders Entered

Opinions Below

United States Court of Appeals for the Eleventh Circuit
Case No. 05-13278
Petition for Rehearing En Banc
Denied: November 6, 2006
Not Published

United States Court of Appeals for the Eleventh Circuit
Case No. 05-13278
Dismissed: April 13, 2006
Not Published

Federal District Court for the Southern District of Florida
Case No. 0480795-CIV-Middlebrooks/Johnson
Dismissed: April 6, 2005
Not Published

Jurisdiction

The jurisdiction of this Court is invoked under:

1. **United States Court of Appeals**
   For the Eleventh Circuit
   Case No. 05-13278
   Petition for Rehearing En Banc
   DENIED on November 6, 2006

2. **United States Court of Appeals**
   For the Eleventh Circuit
   Case No. 05-13278
   Dismissal of Case Affirmed on April 13, 2006

3. **United States Federal District Court**
   for the Southern District of Florida
   Case Dismissed on April 6, 2005

4. **Article III, Section 2, Clause 1 of the Constitution of the United States**

5. **The Fifth Amendment to the Constitution of the United States**

6. **28 U.S.C. § 1254(1)**

Constitutional Provisions Involved

1. Article III, Section 2, Clause 1 of the Constitution of the United States

2. The Fifth Amendment to the Constitution of the United States, pertaining specifically to the right to due process of law

IMPORTANT PERTINENT REFERENCE

From Black's Law Dictionary, sixth edition, a pertinent part of the definition of "Due process of law"

> **"...Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law..."**

Statement of the Case

I. What this case currently concerns:

A. Whether or not the Petitioner was deprived of his Fifth Amendment Constitutional Right to Due Process of Law, when the Respondent denied him an appeals hearing.

B. If the Petitioner was not deprived of his Fifth Amendment Constitutional Right to Due Process of Law, by being denied an appeals hearing, then the Petitioner seeks the truth regarding what administrative procedure(s) which would then provide the Petitioner with his Constitutional Right to Due Process of Law.

C. Whether or not federal agents/employees/officers, who violate Constitutional Rights of individuals, are protected by *Sovereign Immunity.*

D. Whether or not the Anti-Injunction Act, 26 USC §7421(a), legally and lawfully applies to the general public.

E. The Petitioner is not suing the Respondent, or anyone else, for damages.

Previously:

A. United States District Court for the Southern District of Florida, Case No. 0480795-CIV-Middlebrooks/Johnson: Dismissed: April 6, 2005. Judge Donald M. Middlebrooks dismissed this case. The reasons he gave were:

1. The Respondent was entitled to the *sovereign immunity,* just as if the Petitioner was suing the United States, itself.
2. The Anti-Injunction Act, 26 USC §7421(a), barred the Petitioner's suit.
3. The Petitioner had not exhausted all administrative remedies prior to filing suit.
4. Judge Middlebrooks did not specify what administrative remedies the Petitioner did

have available to him, but failed to "exhaust" (which Judge Middlebrooks believed he should have "exhausted"), prior to filing his suit.

B. United States Court of Appeals for the Eleventh Circuit, Case No. 05-13278-JJ: Dismissed April 13, 2006

Judges: Edmundson, Chief Judge; Marcus and Wilson, Circuit Judges.

The judges basically agreed with the lower court.

C. The Petition for Rehearing En Banc was Denied on November 6, 2006.

Reasons for Granting this Petition

I. The decisions of the lower courts may be erroneous for the following reasons.

A. The Petitioner has been unable to locate any statute, or federal court case, where any federal agents/employees/ officers are protected by *Sovereign Immunity*.

B. The Anti-Injunction Act, 26 USC §7421(a), does not appear to be legally and lawfully applicable to the general public because:

1. Not only do Tax Courts exist, but their decisions are routinely appealed to United States Federal District Courts, and also to United States Courts of Appeal.

2. a. The Federal Register Act, currently located at 44 USC, Chapter 15, § 1505, basically states that any document or order which: "prescribes a penalty has general applicability and legal effect" "may" be required to be published in the Federal Register.

b. The United States Codes are published in the Federal Register.

c. The entire Code of Federal Regulations has been published in the Federal Register.

d. The Anti-Injunction Act, 26 USC §7421(a), has no corresponding part within the Code of Federal Regulations.

II. The National Importance of the Questions Involved to all other American Citizens.

A. ***The essence of the purpose for the creation of the Declaration of Independence was for the protection of the rights of all of the people. Therefore, any who violate the rights of any of the people also violate the purpose of the creation of the Declaration of Independence, which created this great nation, the United States of America.***

B. It is vitally important that the American People have confidence in the United States system of justice.
C. It must be proven to all of the American People that ***Truth and Justice are <u>always</u> the two most important things in any legal proceeding, especially concerning the Constitutional and/or Civil Rights of Any or All American Citizens.***

Conclusion

Based on the foregoing information, the Petitioner most humbly and respectfully requests that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

Louis Segal

Louis Segal, Pro Se Petitioner
313 Sandtree Drive
Palm Beach Gardens
Florida 33403-1520

Dated April 6, 2007

INDEX TO APPENDICES

A. *Page 9*
Federal District Court for the Southern District of Florida
Case No. 0480795-CIV-Middlebrooks/Johnson
Dismissed: April 6, 2005
Not Published

B. *Page 22*
United States Court of Appeals for the Eleventh Circuit
Case No. 05-13278
Dismissed: April 13, 2006
Not Published

C. *Page 27*
United States Court of Appeals for the Eleventh Circuit
Case No. 05-13278
Petition for Rehearing En Banc
Denied: November 6, 2006
Not Published

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 0480795-CIV-MIDDLEBROOKS/JOHNSON

LOUIS SEGAL,

Plaintiff,

LINDA WHITMYRE,

Defendant.

_____/

FILED by_____D.C.

APR 06 2005

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE came before the Court upon Defendant's Motion to Dismiss (DE 14) (the "Motion"). The Court has reviewed the Motion, Plaintiff's Motion to Deny Defendant's Motion to Dismiss with Opposing Memorandum of Law (DE 15) and is otherwise fully informed of the premises and finds that the Defendant's Motion is due to be granted.

I. Legal Standard

A motion to dismiss is appropriate when it is demonstrated "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley*

v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102 (1957). For the purposes of the motion to dismiss, the complaint is construed in the light most favorable to the plaintiff, and all facts alleged by the plaintiff are accepted as true. *Hishon v King & Spaulding,* 467 U.S. 69, 73, 104 S.Ct. 2229, 2232-33, L.Ed. 2d 59 (1984). Regardless of the alleged facts, however, a court may dismiss the complaint on a dispositive issue of law. Whether a government official is immune from suit is such a dispositive issue of law. Accordingly, if the defendant is entitled to absolute or qualified immunity, then the instant action must be dismissed. It is from this perspective that we begin our analysis.

II. Background

The following recitation of facts, from Plaintiff's Amended Complaint (the "Complaint").[1] Plaintiff alleges that

[1] The facts alleged in the Complaint are taken to be true for this Motion to Dismiss. *Hishon v King & Spaulding,* 467 U.S. 69, 73, 104 S.Ct. 2229, 232-33, L.Ed. 2d 59 (1984). The Court notes that they amended Complaint was virtually devoid of factual allegations. Instead, the Complaint is an exposition of demands.

the Defendant, IRS agent Linda Whitmyre, violated his constitutional rights by refusing to give him an appeals hearing relating to IRS assessments for unpaid income taxes. He also claims that his statutory right to information under the Freedom of Information Act was violated when agent Whitmyre refused to explain to him why he was not legally entitled to an appeal.

Specifically, Plaintiff asserts that: (1) he wrote to Whitmyre twice requesting an appeals hearing or a legal reason accompanied by "proof/documentation" that he was not legally entitled to such hearing; (2) when Whitmyre responded to his first letter, she denied his request for an appeals hearing, but did not provide the requested "proof/documentation;" and (3) Whitmyre never responded to his second letter making identical requests to those contained in his first letter. The remainder of the Complaint sets forth various cases and "issues of law" for the Court to consider.

The Defendant filed a Motion to Dismiss pursuant to FED. R. CIV. PROC. 12 (b)(1) asserting that this action is

barred by the doctrine of sovereign immunity or by the application of the Anti-Injunction Act. Plaintiff has responded that his action is against Whitmyre in her individual capacity and so neither doctrine is applicable to the situation herein.

III. DISCUSSION

Federal courts exercise limited subject matter jurisdiction, and powered here only those cases within the judicial power of the United States as defined by Article III of the Constitution or otherwise authorized by Congress. Wright Miller & Cooper, 13 Federal Practice and Procedure § 3522 (1984). In general, the United States is immune from suit under the doctrine of sovereign immunity unless it explicitly waives such immunity. *United States v. Mitchell,* 445 U.S. 535, 538 (1980). The Plaintiff has the burden of establishing that the United States has waived sovereign immunity, *Baker v. United States,* 817 F.2d 560, 562 (9th Cir. 1987), and to identify the specific statutory provision containing such waiver and underlying such suit. *See Swofford v. United States,* 2000 WL 1039495 (S. D. III. 2000). The waiver

must be express and will not be implied. *Lane v. Pena,* 518 U.S.,-187, 192 (1996). The scope of a waiver of sovereign immunity is to be strictly construed in favor of the sovereign. *Department of the Army v. Blue Fox, Inc.,* 525 U.S. 255, 261 (1999).

The doctrine also extends to suits against federal officers and employees for actions taken within the scope of their employment. Such an action is deemed to be a suit against the United States itself, and therefore subject to the defense of sovereign immunity. *See Hawaii v. Gordon,* 373 U.S. 57 (1963). Plaintiff asserts, however, that this is not the case here in because the Complaint names Whitmyre solely in her individual and non-official capacity. Plaintiff's choice of nomenclature, however, does not necessarily change the nature of his suit. Defendant contends that a review of the Complaint reveals that, nomenclature aside, Plaintiff seeks damages based on Whitmyre's actions or inactions in response to his inquiries, and that as such, where taken exclusively in her official capacity as an agent of the IRS. The Court agrees.

It follows then that in order for Plaintiff to proceed against Whitmyre, he must demonstrate that the United States has waived its sovereign immunity with respect to the relief sought. *Huntington Towers, Ltd. v. Franklin National Bank,* 559 F. 2d 863, 869-70 (2d Cir.1977), *cert. denied,* 434 U.S. 1012, 98 S.Ct. 726, 54 L. Ed.2d 756 (1978). Plaintiff premises jurisdiction on both 42 U.S.C. 1983 and 5 U.S.C. 552.[2] section to confer jurisdiction upon this Court over the instant matter.

In evaluating the Complaint, the Court is mindful that a pro se plaintiff's complaint should be held to a less stringent standard than formal pleadings by lawyers. Additionally, when jurisdiction is premised on an alleged violation of federal law, dismissal should be denied so that the Court may allow for discovery to develop a jurisdictional foundation.

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[2] Section 4(B) of this chapter provides, in pertinent part that "[upo]n complaint, the district dourt of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated...has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.

However, this is not true if review of the Complaint establishes that the underlying claim is completely meritless. In such a case, dismissal is proper. With this in mind, in construing Plaintiffs claim extremely liberally, the Court finds that the Complaint is subject to dismissal.

Plaintiff first asserts that jurisdiction is proper under the Freedom of Information Act because he requested "proof/ documentation that he was not legally entitled to an appeal" from agent Whitmyre and did not receive it. This position lacks merit because Plaintiff has failed to assert exactly what records/documents he requested. 15 FED. PROC., L. ED. §38:309 provides that "[a]gencies are only required act upon our request which 'reasonably describes' identifiable non-exempt records." This requirement ensures that a public official as able to "identify and produce the records without unduly burdening or disrupting any of the agency operations." Additionally, where desired information is made readily available by an agency, a request under the Freedom of Information Act is unnecessary. *Id.* at §38:299. The Court

takes judicial notice that the IRS has promulgated numerous documents that enumerate their policies and procedures and inform taxpayers of their rights – and specifically the procedures they should follow to enforce their rights.

Additionally a plank of bringing an action under the FOIA must adequately plead that the agency (1) improperly, (2) withheld (3) agency records, and a less all three criteria are satisfied, a District Court lacks jurisdiction over the FOIA claim. *See Kissinger v. Reporters Committee for Freedom of Press,* 445 U.S. 136, 150, 100 S. Ct. 960, 968, 63 L.Ed.2d 267 (1980). The burden is on the Defendant to prove that the agency records were not improperly withheld, or that they were not in fact agency records. *Id.* The Court finds that it is impossible for a Defendant to carry such burden when the request is as vague as the one herein which simply states that Plaintiff requested proof/documentation of a legal right of lack of entitlement to an appeal.

In addition to the three criteria set forth above, a plaintiff must also allege that he has exhausted all of his

administrative remedies prior to filing in action in a district court. *See Judiciaonel Watch, Inc. v. F.B.I.*, 190 F.Supp.2d (D.D.C. 2002). Plaintiffs Notice of Filing contained Whitmyre's response to his October 22nd request. The letter from Whitmyre indicated to the Court both that Plaintiff has not exhausted his administrative remedies as required and that it cannot fairly be said that Whitmyre failed to [supply] Plaintiff with the information he requested. Specifically, Ms. Whitmyre responded to Plaintiff's request by writing "[f]rom the information I reviewed I see that you did not petition the Tax Court and the amounts of deficiency have been assessed. At this point, as I mentioned in my previous letter, you can request audit consideration. The brochure describing this process is enclosed. If your case is reconsidered and you are not in agreement with the outcome, you can request an appeal at that time." (Pltf' Not. of Filing 4).

This response indicates that Plaintiff has not exhausted his administrative remedies. "A plaintiffs failure to exhaust administrative remedies precludes a federal court from

exercising subject-matter jurisdiction over the party's FOIA claims." *See Judicial Watch, Inc. v. F.B.I.,* 190 F.Supp.2d (D.D.C. 2002). "The exhaustion requirement ... allows the top managers of an agency to correct mistakes made at lower levels and thereby obviates unnecessary judicial review." *Id.; Oglesby v. United States Dep't of the Army,* 920 F.2d 57, 61 (D.C.Cir.1990). Additionally, the letter explained why Whitmyre could not grant Plaintiff an appeal and provided information as to what actions he must take in order to secure an appeal is therefore a response to Plaintiff's vague request. This contradicts Plaintiff's assertion that he never received the requested information.[3]

For these reasons, the Court finds that it is without subject matter jurisdiction over Plaintiff's FOIA claim.

Plaintiff alternatively asserts that jurisdiction is still proper pursuant to 42 U.S.C 42 1983 which alleges that his constitutional rights to due process have been violated. It is

[3] As to Plaintiff's second request three weeks after his first request, the Court finds that because the requests were identical, and because requests were vague, as discussed above, that Whitmyre's failure to respond, even if true, does not establish a valid FOIA claim.

well-established that 42 U.S.C.A. § 1983 "provides 'a remedy for deprivation of rights under color of state law. Section 1983, however, is not a proper jurisdictional basis for a suit against the United States or the IRS because this section is intended to allow a plaintive to recovery for violations of his or her constitutional rights when the violation is committed by a person acting under color of "state law and do not apply when the defendants are acting under color of Federal Law." *See Carmen v. Parsons* 789 F.2d 1532, 1534 (11th Cir. 1986); *Seibert v. Baptist,* 594 F.2d 423 (5th Cir. 1979)(rev'd on other grounds 599 F.2d 743 (5th Cir. 1979)); *Mack v. Alexander,* 575 F.2d 488, 489 (5th Cir. 1978). Accordingly, the Court does not have jurisdiction pursuant to this section.

In addition to the analysis above, the Court notes that 26 U.S.C. §7421(a) prohibits the bringing of a "suit for the purpose of restraining the assessment or collection of any tax.... §7421(a) is strictly enforced. *See Bob Jones University v. Simon,* 416 U.S. 725, 94 S.Ct. 2038, 40 L.Ed. 496 (1974). The purpose of the statute is to allow the United

States to assess and collect taxes without judicial intervention. Enochs v. Williams Packing and Navigation Co., 370 U.S. 1, 7, 82 S. Ct. 1125, 1129, 8 L.Ed.2d 292 (1962). It is only in "rare and compelling circumstances" where a federal court will entertain such an action. *See Mathes v. U.S.*, 901 F.2d. 1031, 1033 (11th Cir. 1990). The existence of such a rare and compelling circumstances may not even be evaluated unless and until a taxpayer has exhausted all available administrative and procedural remedies. *Id.* Accordingly, for the reasons set forth herein, it is

ORDERED AND ADJUDGED that the Motion (DE 14) be and is hereby **GRANTED.** Plaintiff's Complaint should be **DISMISSED WITH PREJUDICE.** It is further **ORDERED AND ADJUDGED** that the **CLERK shall CLOSE THIS CASE and DENY** any and all pending motions as **MOOT.**

DONE AND ORDERED in Chambers at West Palm Beach, Florida this 6 day of April, 2005.

s/_____

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Copies to Counsel of Record

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 05-13278
Non-Argument Calendar

D.C. Docket No. 04-80795-CV-DMM

LOUIS SEGAL,

Plaintiff-Appellant,

versus

COMMISSIONER OF IRS,
by serving Linda Whitmyer,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(April 13, 2006)

Before EDMONDSON, Chief Judge, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

Louis Segal appeals pro se the district court's dismissal of his complaint, filed under 42 U.S.C. §1983 and 5 U.S.C. §552, seeking an appeals hearing before the Internal Revenue Service ("IRS") and alleging a violation of Segal's due process rights. No reversible err has been shown; we affirm.

Segal filed a complaint against Linda Whitmyre, an IRS appeals officer, in her individual capacity. Segal alleged that he twice requested from Whitmyre either an appeals hearing or a legal reason why he was not entitled to a hearing. Whitmyre responded to his first letter and denied his request for an appeals hearing. Segal asserted that Whitmyre did not provide him with a sufficient explanation about why he was not entitled to a hearing.[1] Segal requested the district court to grant him an appeals hearing so he could ask "all questions pertinent to his legal responsibility to file and pay income

[1] Segal also claimed that Whitmyre violated his right to information under the Freedom of Information Act by refusing to explain why he was not entitled to hearing. Segal also requested damages. But on appeal Segal expressly abandons his arguments under FOIA in his claim for damages against Whitmyre. We, thus, analyze only Segals' claim that he should receive an appeals hearing.

taxes." Segal's legal objectives were (1) "[t]o discover the whole truth regarding the legality of federal income tax application," (2) "[t]o prove...that the [IRS] policies and procedures are not legally superior to the Constitutional... Rights of all American Citizens," and (3) "[t]o prove...that no one working for the [IRS] is above the law, and...they cannot violate any laws and/or rights with impunity."

The district court dismissed Segal's complaint for lack of subject matter jurisdiction. We review the district court's dismissal de novo. Federated Mut. Ins. Co. v. McKinnon Motors, LLC, 329 F.3d 805, 807 (11th Cir. 2003).

We agree with the district court that the doctrine of sovereign immunity applies in that Segal has not demonstrated a waiver of this immunity. "[T]he United States, as sovereign, is immune from suit, save as it consents to be sued." United States v. Dalm, 110 S.Ct. 1368 (1990) (citation omitted). A suit is deemed to be against the sovereign if the judgment sought would, among other things, interfere with the public

administration, "or if the effect of the judgment would be to restrain the Government from acting, or to compel it to act." Dugan v. Rank, 83 S.Ct. 999 1006 (1963) (citation omitted). Segal protests that he is suing Whitmyre in her individual and non-official capacity. But the relief he seeks—the grant of appeals hearing—requires Whitmire's official action in her capacity as an IRS appeals officer. And Segal's stated reasons for filing this suit show that his suit is against the IRS, not against Whitmire personally.

Sovereign immunity applies to bar Segal's suit, unless he shows a waiver of this immunity. Segal asserts that, under 42 U.S.C. § 1983, Whitmyre has violated his due process rights and that she is not entitled to qualified immunity. But § 1983 provides a remedy for deprivation of federal rights by state law: it is not a basis for a suit against the United States or the IRS. See 42 U.S.C. § 1983; Carman v. Parsons, 789 F.2d 1532, 1534 (11th Cir. 1986). Segal has not shown a waiver of sovereign immunity. And, despite Segal's claim to that his

suit is not about tax liability, we agree with the District Court that the Anti-Injunction Act ("AIA"), 26 U.S.C. § 7421(a), prohibits this suit.[2] The district court did not err in dismissing Segal's complaint.

AFFIRMED.

[2] The AIA prohibits suit brought "for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421(a). Courts interpret this provision broadly. See Hobson v. Fischbeck, 758 F.2d 579, 580-81 (11th Cir. 1985). A narrow--but inapplicable--exception to the AIA exists: where the plaintiff shows that under no circumstances could the government ultimately prevail on its tax claim and where their exists an independent basis for equity jurisdiction. Id. 581.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 05 – 13278 - JJ

LOUIS SEGAL,

Plaintiff-Appellant,

COMMISSIONER OF IRS,
by serving Linda Whitmyer,

Defendant, Appellee.

On Appeal from the United States District Court for the Southern District of Florida

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ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

Before: EDMONDSON, Chief Judge, MARCUS and WILSON, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

S/
CHIEF JUDGE

ORD-42

FILED, U.S. COURT OF APPEALS ELEVENTH CIRCUIT, NOV 06 2006, THOMAS KAHN, CLERK